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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: Blansit, et al.

Application No: 10/762,392

Filed: January 22, 2004

For: METHOD AND APPARATUS FOR
SANITIZING A PRODUCT DISPENSER
DRIP TRAY

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Atty. Docket No: L-0170.81

Examiner: Perrin, Joseph L.

Group Art Unit: 1746

APPEAL BRIEF

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Sir:

Applicant timely presents its Brief on Appeal for the referenced application.

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REAL PARTY IN INTEREST

The real party in interest is Lancer Partnership, Ltd., a Texas limited liability partnership, having a business address of 6655 Lancer Blvd., San Antonio, Texas 78219.

RELATED APPEALS AND INTERFERENCES

There are no related appeals and interferences of which Applicant is aware.

STATUS OF THE CLAIMS

Claims 1-24 remain in the referenced application. Claims 25-36 have been withdrawn from consideration, and are canceled.

STATUS OF AMENDMENTS

Applicant's Amendment "A" dated January 4, 2007, was entered into the referenced application. Applicant's Amendment After Final dated June 28, 2007 has been entered into the referenced application for the purposes of this Appeal.

SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is a sanitizing system for a product dispenser. (see page 3, line: 13, in light of Figures 1-2a). In this filing, a drip tray sanitizing system includes a valve, a pump and a spray manifold used to deliver a sanitizing mixture or a diluent to a drip tray of a product dispenser (see page 3, lines: 15-17, in light of Figure 1). The sanitizing mixture or diluent is sprayed in a shape complementary to the inner chamber of the drip tray for a predetermined interval (see page: 3, lines: 17-18, in light of Figures 2a-2b). The drip tray sanitizing system may further include a controller to conduct the cleansing or rinsing routines automatically or semi-automatically (see page: 3, lines: 18-20, in light of Figure 3c).

Claim 1

As illustrated in Figures 1-3, a drip tray sanitizing system 100 includes a spray manifold

130, a pump 140, a sanitizer container 160, and a valve 165. The pump includes an inlet port 178 and an outlet port 179 (see page: 6, lines: 12-15, in light of Figure 1). The second end 177 of the tubing adapter 175 is connected to a first end 174 of a flexible tubing, herein known as a first sanitizer supply line 148. A second end 173 of the first sanitizer supply line 148 adapts to an outlet port 151 of a quick disconnect connector 150. The inlet port 152 of the quick disconnect connector 150 is suitable for mating with an outlet port 163 of the sanitizer container 160 (see page: 6, lines: 18-22, in light of Figure 1).

The outlet port 179 of the pump 140 is connectable to a first end 276 of a second adapter 275. A second end 277 of the second adapter 275 is connectable to an inlet port 154 of a second sanitizer supply line 144. An outlet port 155 of the second sanitizer supply line 144 is connectable to a second inlet port 186 of a mixing union 145 (see page 7, lines: 3-6, in light of Figure 1). The backflow prevention device 170 further includes an inlet port 171 that is plumbed to a diluent source (see page 7, lines: 10-11, in light of Figure 1).

The second end 181 of the adapter 180 connects to a first end 183 of a diluent supply tube 146 (see page 7, lines: 17-18, in light of Figure 1). The diluent supply tube 146 further includes a second end 184 that is adaptable to a first inlet port 185 of the mixing union 145. The mixing union 145 further includes an outlet port 187 (see page 7, lines: 18-20, in light of Figure 1).

The outlet port 187 of the mixing union 145 is coupled to an inlet port 188 of a mixture tube 138. An outlet port 189 of the mixture tube 138 is coupled to an inlet port 190 of a removable fitting 135. The removable fitting 135 includes an outlet port 191 suitable for mating with an inlet port 192 of the spray manifold 130 (see page 7, lines 21-23 through page 8, line: 1, in light of Figure 1).

The spray manifold 130 includes the inlet port 192, an inner passage 196, spray ports

193, and a groove 194. The inner passage 196 is contained within the confines of the spray manifold 130, and can be accessed through the inlet port 192. The spray ports 193, located in a predetermined pattern on a first side 197 and a second side 198 of the spray manifold 130, pass through to the inner passage 196, thereby providing multiple exit ports for fluids entering through the inlet port 192 (see page 8, lines 6-11, in light of Figure 1).

The mixing union 145 allows the sanitizing fluid and the diluent streams to merge before entering the spray manifold 130 (see page 8, lines: 16-17, in light of Figure 1).

As shown in Figure 2b, the product dispense 200 may be outfitted with a drip tray sanitizing system 100 (see page 9, lines: 4-5, in light of Figures 2a-2b).

The sanitizer fluid and the diluent streams merge in the mixing union 145 and exit the outlet port 187. The mixture then moves through the mixture tube 138, through the removable fitting 135, and into the inlet 192 of the spray manifold 130 when the pump 140 is on and the valve 165 is in the open position. The mixture continues past the inlet port 192 and enters the inner passage 196, where it is forced to exit through the plurality of smaller diameter outlet ports 193. The smaller diameter outlet ports 193 force the fluid to exit in a jet stream, thereby creating a predetermined spray pattern complementary to the inner envelope of the drip tray 101 (see page 10, lines: 19-23 through page 11, lines: 1-3, in light of Figures 1 and 2b).

Claim 15

Claim 15 is drawn to a product dispenser having a drip tray sanitizing system including a controller. Alternatively, a controller 162 which may be any suitable control device such as a microprocessor or microcontroller, may be employed to provide the switching as shown in Figure 3c. The use of a controller 162 provides the capability to semi-automatically or automatically conduct all or some of the drip tray sanitizing operations. The controller 162, the

power supply 161, and the switches 141 and 166 may be packaged as a standalone control system for the drip tray sanitizing system 100 or may be fully integrated into an existing electronic control system of the product dispenser 200 (see page 11, lines 22-23 through page 12, lines: 1-5, in light of Figure 3c). The sanitizing mixture pools in the drip tray 101 to provide a sanitizing effect, and then moves down the drain, thereby sanitizing the drain line (see page 13, lines 4-5, in light of Figure 2b).

In a fully automatic embodiment, the controller 162, having a real-time clock, conducts all of the sanitizing operations for the product dispenser 200 (see page 13, lines 13-14, in light of Figure 3c). In this arrangement, the controller 162 may be programmed to conduct a cleansing routine on a scheduled basis, illustratively, every fifteen minutes or on the hour (see page 13, lines 19-21, in light of Figure 3d).

GROUND OF REJECTION TO BE REVIEWED ON APPEAL

Whether claims 1-14 are patentable under 35 U.S.C. §103(a) over Poindexter. Whether claims 15-24 are patentable under 35 U.S.C. §103(a) over Poindexter in view of Lindner.

ARGUMENTS

Rejections under 35 U.S.C. §102(b)

There are no rejections under 35 U.S.C. 102(b).

Rejections under 35 U.S.C. §103(a)

CLAIM 1

In the Office Action dated March 28, 2007, the Examiner maintains rejections of claims 1-14 under 35 U.S.C. §103(a) as being unpatentable over Poindexter (US Patent No.: 5,398,517, hereinafter denoted as “Poindexter”). The Examiner asserts that Poindexter’s potable water collection tray and Applicant’s invention are functionally equivalent, and, therefore, it would

have been obvious to clean Applicant's drip tray with Poindexter's cleaning system on the basis that placing Poindexter's spray manifold into Applicant's drip tray to create Applicant's invention is acceptable because "the rearranging of part of an invention involves only routine skill in the art." Applicant respectfully disagrees.

The Examiner intends to rearrange Poindexter's Potable Water Collection Device by moving Poindexter's spray nozzle into Poindexter's collection tray to create Applicant's invention. Applicant respectfully submits such a modification is improper as contradictory to MPEP Section 2143.01(VI). MPEP Section 2143.01(VI) states, "If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959)." In applying MPEP 2143.01(VI), Applicant respectfully submits the Examiner's proposed modification must violate MPEP Section 2143.01(VI) because it violates Poindexter's principle of operation.

Poindexter's principle of operation is to produce water in a sanitary environment, and then collect the "potable" water generated. Poindexter sanitizes his entire potable water collection path, runs a refrigerant circuit to produce condensation on his cooling coils, and collects potable water. Poindexter, accordingly, discloses sanitizing his entire "potable water collection path" by placing a spray nozzle above his cooling coils, spraying sanitizing fluid at the uppermost regions of his "potable water collection path," and allowing the sanitizing fluid to move down his collection flowpath, thereby sanitizing the balance of his "potable water collection path." Applicant respectfully contends that movement of Poindexter's spray nozzle to his collection tray only allows Poindexter to sanitize lower regions of his "collection path," as the spray nozzle will not effectively reach the higher portions of his collection path, including his

cooling coils. Applicant respectfully submits that unsanitized areas in Poindexter's water collection path will result in the propagation of bacteria and contamination of the entire collection path, as well as the water collected by Poindexter. Poindexter's principle of operation includes sanitizing his entire collection path to maintain a sterile environment for the generation and collection of potable water. Applicant therefore respectfully submits that sanitizing only a "portion" of Poindexter's "potable water collection path" does not permit Poindexter to maintain a sanitary environment, as bacteria will form and propagate in the unsanitized areas.

While the Examiner has stated that the Applicant's arguments are speculative, Applicant respectfully contends that Applicant's arguments are based on years of experience in the product dispensing industry, and are consistent with other sanitation trends in the industry. Illustratively, the areas of product packaging require packaging processes in a sterile environment (no pathogens). Plastic bags formed for later filling with a product must be irradiated to remove all pathogens before being filled with the product. Once all pathogens are removed from the product package, the product may be inserted into the product packages in a sterile environment. As such, the irradiated product package filled in a sterile environment is aseptic (free from pathogens). Alternatively, if pathogens remain in the product package, the pathogens will propagate and spoil the product disposed within the product package. Applicant respectfully contends that potable water collection processes are similarly susceptible to pathogens, which is why Poindexter sanitizes his collection system. Otherwise, pathogens, both airborne and liquid suspended, move with the water and into the water collection device, eventually contaminating the entire system.

A contaminated water collection path is not conducive to collecting potable water, as the bacteria developing at the coils will be transmitted by the water flow to water storage devices.

Poindexter must be able to produce and collect water in a sanitized environment. Therefore, contrary to the Examiner's assertion, Poindexter teaches away from placing his spray manifold in a lower region of his "collection path." Poindexter must retain a sanitary "potable water collection path" at all times, and therefore is forced to place his spray nozzle in a place that ensures the sanitization of his entire "potable water collection path." Clearly, movement of Poindexter's spray nozzle to his collection tray violates MPEP Section 2143.01(VI), as placement of Poindexter's spray nozzle into his collection tray does not allow Poindexter to sanitize his entire "potable water collection path," which violates Poindexter's principle of operation.

Moreover, the Examiner's modification to Poindexter's potable water collection system also violates MPEP Section 2143.01(V). MPEP Section 2143.01(V) states, "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)." Applicant respectfully submits that the Examiner's proposed modification must violate MPEP Section 2143.01(V), because it destroys Poindexter's intended purpose.

As described in the arguments for claim 1 in view of MPEP Section 2143.01(VI), Poindexter's intended purpose is to produce water in a sanitary environment, and then collect the "potable" water generated. Poindexter, accordingly, sanitizes his entire potable water collection path, runs a refrigerant circuit to produce condensation on his cooling coils, and collects potable water. Poindexter, accordingly, discloses sanitizing his entire "potable water collection path" by placing a spray nozzle above his cooling coils, spraying sanitizing fluid at the uppermost regions of his "potable water collection path," and allowing the sanitizing fluid to move down his

collection flowpath, thereby sanitizing the balance of his “potable water collection path.” Applicant respectfully contends that movement of Poindexter’s spray nozzle to his collection tray only allows Poindexter to sanitize lower regions of his “collection path,” as the spray nozzle will not effectively reach the higher portions of his collection path, including his cooling coils. Applicant respectfully submits that unsanitized areas of Poindexter’s water collection path will result in the propagation of bacteria and eventual contamination of the entire collection path, as well as the water generated by the potable water collection device. Poindexter’s intended purpose is to generate and collect potable water, and therefore, Poindexter is forced to sanitize his entire collection path. Failure to do so renders Poindexter’s potable water collection device unsanitary, and water generated in a non-sterile environment is not potable. Applicant respectfully submits that a partially sanitized water collection path does not produce sanitized or potable water. Poindexter discloses a “potable water collection coil cleaning device.” The contaminated areas then contaminate the remainder of his collection path, including his potable water storage devices, as the contaminated water flows to the storage devices. As such, the movement of Poindexter’s spray nozzle into his collection tray violates MPEP Section 2143.01(V), as placement of Poindexter’s spray nozzle into his collection tray does not allow Poindexter to sanitize his entire collection path, thereby creating the contamination points along his collection path.

Based on the foregoing arguments, Applicant respectfully contends that claim 1 is patentable over Poindexter, as the rejection is contrary to MPEP Sections 2143.01 (V) and (VI), and respectfully requests that the rejection of claim 1 under 35 U.S.C. §103(a) be withdrawn.

Claims 2-14 stand rejected under 35 U.S.C. §103(a) as being anticipated by Poindexter. Applicant respectfully contends that the patentability of claims 2-15 lies with the patentability of

claim 1.

CLAIM 15

Claim 15 stands rejected under 35 U.S.C. §103(a) by Poindexter in view of Lindner (U.S. Patent No.: 3,942,685, hereinafter denoted as “Lindner”). The Examiner asserts that “Poindexter discloses an apparatus for periodically cleaning a water collection tray of a potable water collection system,” and Lindner discloses, “a product dispenser comprising a housing including a controller and drip tray disposed on the housing.” The Examiner further asserts that, “it would have been obvious for one skilled in the art to use the cleaning system taught by Poindexter in the product dispenser taught by Lindner to obtain the claimed product dispenser, because the drip tray of Lindner and the collection tray taught by Poindexter are functionally equivalent.”

Applicant respectfully traverses the Examiner’s rejection of claim 15 over the combination of Poindexter in view of Lindner because the combination violates MPEP Section 2143.01 (VI). MPEP Section 2143.01 (VI) states, “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims prima facie obvious. *In re Ratti*, 270 F .2d 810, 123 USPQ 349 (CCPA 1959).” Applicant respectfully contends in applying MPEP Section 2143.01(VI), it is clear the principles of operation of both Lindner and Poindexter must be compromised with the Examiner’s current combination.

Lindner discloses removing his drip tray from his product dispenser for cleansing. Lindner clearly states, “By this arrangement, the drip tray 140 is easily and readily removable from the housing 3 independently of the cover 26 for cleaning when dripping or leakage does occur contributing to the maintenance of a sanitary condition within the refrigerator,” (Col.: 8, Lines: 66-68 through Col.: 9, Lines 1-3). Clearly, the Examiner’s modification of placing

Poindexter's spray nozzle into Lindner's drip tray for cleansing is contrary to Lindner's principle of operation, because Lindner removes his drip tray from the product dispenser for cleansing. Sanitizing a product dispenser drip tray "in-place" is markedly different than removing the drip tray for cleansing, because "in-place" cleansing requires disposal of all fluids delivered to the drip tray. In fact, Lindner provides no capability to drain his drip tray to a suitable disposal. Consequently, the influx of fluid from Poindexter's spray nozzle would rapidly fill Lindner's drip tray thereby creating an undesired overflow of sanitizing fluid, remnant, and the like. Lindner's drip tray is not prepared to accept large amounts of fluid from Poindexter's spray nozzle, and therefore the placement of Poindexter's spray nozzle into Lindner's drip tray clearly contradicts Lindner's principle of operation.

As previously presented in the arguments for claim 1, Poindexter's principles of operation require the sanitizing of the entire "potable water collection path" to ensure the generation and delivery of potable water to a storage device. Failure to sanitize Poindexter's entire "potable water collection path" renders Poindexter's potable water collection device inoperable, as microbial growth will occur and contaminate the potable water generated and collected. Applicant therefore respectfully contends that the Examiner's movement of Poindexter's spray nozzle to a lower region of a collection path, such as Lindner's drip tray, does not allow the cleansing of upper regions of the collection path," as required by Poindexter. The Examiner, accordingly, has violated MPEP 2143.01(VI) by compromising Poindexter's ability to sanitize an entire "collection path" to ensure that potable water is generated, because Poindexter is forced to deliver sanitizing fluid to his entire potable water collection path to prevent the contamination of the path. Placement of Poindexter's spray nozzle into Lindner's drip tray does not allow Poindexter to maintain a sanitary flowpath. Accordingly, the combination of

Poindexter and Lindner is improper and violates MPEP Section 2143.01(VI), as the principles of operation of both Lindner and Poindexter must be changed in order to produce the claimed invention.

In fact, the only disclosure that a sanitizing nozzle be placed in a drip tray is found in Applicant's disclosure. Lindner has no disclosure illustrating a sanitizing nozzle in his drip tray and Poindexter teaches away from placing his spray nozzle in a lower region of his collection path. Accordingly, the only motivation to place Poindexter's spray nozzle into Lindner's drip tray is found in Applicant's invention, which constitutes a "hindsight reconstruction" of Applicant's invention using Applicant's disclosure.

The Examiner has stated, "one cannot show nonobviousness by attacking the references individually where the rejections are based on combinations of references." Applicant respectfully submits the references have not been attacked individually; rather the deficiencies in each reference that prevent their combination have been explained. Applicant contends that the references both teach away from Applicant's invention, and, therefore, are not combinable. Accordingly, Applicant's arguments address the deficiencies of the nonobvious combination by providing evidence that the references may not be combined absent teachings set forth in Applicant's disclosure on the basis that both references teach away from the combination.

Based on the foregoing arguments, Applicant respectfully contends that claim 15 is patentable over Poindexter, as the rejection is contrary to MPEP Section 2143.01 (VI), and respectfully requests that the rejection of claim 15 under 35 U.S.C. §103(a) be withdrawn.

Claims 16-24 stand rejected under 35 U.S.C. §103(a) by Poindexter in view of Lindner. Applicant respectfully contends that the patentability of claims 16-24 lies with the patentability of claim 15.

Respectfully submitted,

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CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post office to Addressee" service under 37 CFR 1.10 on the dated indicated below, addressed to the Commissioner for Patents, P.O. Box 1450, Arlington, VA 22313-1450.

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John Vira

CLAIMS APPENDIX

Claim 1: A drip tray sanitizing system, comprising:

a pump having an inlet port and an outlet port, wherein the inlet port is in communication with a sanitizing fluid source; and

a spray manifold disposed in a drip tray of a product dispenser, the spray manifold having an inlet port in communication with the outlet ports of the pump and multiple exit ports, wherein, when energized, the pump delivers a sanitizing fluid through the outlet ports of the spray manifold and into the drip tray for cleansing or sanitizing purposes.

Claim 2: The drip tray sanitizing system according to claim 1, further comprising:

a controller in electrical communication with the pump, wherein the controller controls the activation of the pump, thereby controlling the delivery of the sanitizing fluid through the spray manifold and into the drip tray.

Claim 3: The drip tray sanitizing system according to claim 1, further comprising:

a valve including an inlet port and an outlet port, wherein the inlet port is in communication with a diluent source, and the outlet port is in fluid communication with the spray manifold, wherein when energized, the valve delivers a diluent to the spray manifold for delivery to the drip tray for mixing with the sanitizing fluid.

Claim 4: The drip tray sanitizing system according to claim 3, further comprising:

a controller in electrical communication with the pump and the valve, wherein the controller controls the activation of the pump and the valve, thereby controlling the delivery of the sanitizing fluid and the diluent through the spray manifold and into the drip tray.

Claim 5: The drip tray sanitizing system according to claim 4, wherein only the valve is energized to provide a rinsing function.

Claim 6: The drip tray sanitizing system according to claim 3, further comprising:

a mixing union coupled at a first inlet to the outlet of the pump, at a second inlet to the outlet of the valve, and at an outlet to the inlet port of the spray manifold, whereby the diluent and the sanitizing fluid merge before entry into the spray manifold to aid in mixing.

Claim 7: The drip tray sanitizing system according to claim 1, wherein the sanitizing fluid source is a container filled with a sanitizing fluid.

Claim 8: The drip tray sanitizing system according to claim 7, wherein the container is disposable.

Claim 9: The drip tray sanitizing system according to claim 7, wherein the container is refillable.

Claim 10: The drip tray sanitizing system according to claim 7, wherein the container is coupled to the drip tray sanitizing system with a quick disconnect connector to ease container change out.

Claim 11: The drip tray sanitizing system according to claim 1, further comprising:

a pump switch in electrical communication with the controller and the pump, wherein the pump is energized when the pump switch is depressed, thereby delivering sanitizing fluid to drip tray.

Claim 12: The drip tray sanitizing system in claim 3, further comprising:

a valve switch in electrical communication with the controller and the valve, wherein the valve is energized when the valve switch is depressed, thereby delivering diluent to the drip tray.

Claim 13: The drip tray sanitizing system according to claim 4, wherein the controller energizes only the valve to rinse the drip tray.

Claim 14: The drip tray sanitizing system according to claim 2, wherein the controller energizes

only the pump to move sanitizing fluid into the drip tray.

Claim 15: A product dispenser, comprising:

a housing, wherein the housing includes a controller;

a drip tray disposed on the housing; and

a drip tray sanitizing system, wherein a spray manifold, disposed in the drip tray, is coupled to a pump in communication with a sanitizing fluid source to deliver a sanitizing fluid to the drip tray for cleansing or sanitizing purposes when the sanitizing system is energized.

Claim 16: The product dispenser according to claim 15, further comprising:

a controller in electrical communication with the pump, wherein the controller controls the activation of the pump, thereby controlling the delivery of the sanitizing fluid through the spray manifold and into the drip tray.

Claim 17: The product dispenser according to claim 15, further comprising:

a valve including an inlet port and an outlet port, wherein the inlet port is in communication with a diluent source, and the outlet port is in fluid communication with the spray manifold, wherein when energized, the valve delivers a diluent to the spray manifold for delivery to the drip tray for mixing with the sanitizing fluid and cleansing purposes.

Claim 18: The product dispenser according to claim 17, further comprising:

a controller in communication with the valve and the pump, wherein the controller energizes the valve and the pump to deliver the mixture of the sanitizing fluid and the diluent to the drip tray.

Claim 19: The beverage dispenser according to claim 15, wherein the drip tray sanitizing system is internal to the beverage dispenser.

Claim 20: The beverage dispenser according to claim 15, wherein the drip tray sanitizing system

is a retrofit into existing product dispenser.

Claim 21: The product dispenser according to claim 17, wherein the valve and the pump of the drip tray sanitizing system are remotely located from the product dispenser.

Claim 22: The product dispenser according to claim 18, wherein the controller energizes only the valve to provide a drip tray rinse function.

Claim 23: The product dispenser according to claim 16, wherein the controller energizes only the pump to move sanitizing fluid to the drip tray.

Claim 24: The product dispenser according to claim 18, wherein the controller initiates drip tray sanitizing cleansing routines at predetermined intervals.

Claims 25-36 (canceled).

Evidence Appendix

There are no entries in the Evidence Appendix.

Related Proceedings Appendix

There are no related proceedings cited in this Appeal Brief.